

SERIAL 07116 RFP ON-LINE MANAGEMENT LEVEL COMPLIANCE TRAINING – HR

DATE OF LAST REVISION: March 15, 2008

CONTRACT END DATE: May 31, 2011

CONTRACT PERIOD THROUGH MAY 31, 2011

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ON-LINE MANAGEMENT LEVEL COMPLIANCE TRAINING – HR**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **May 15, 2008**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

SF/mm
Attach

Copy to: Materials Management
Elizabeth Yaquinto, Human Resources



CONTRACT PURSUANT TO RFP

SERIAL 07116-RFP

This Contract is entered into this 15th day of May, 2008 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and ELT, Inc., a California corporation, ("Contractor") for the purchase of an On-Line Management Level Compliance Training Program (License Agreement) service.

1.0 TERM

- 1.1 This Contract is for a term of three (3) years, beginning on the 15th day of May, 2008 and ending the 31st day of May, 2011.
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of three (3) years, (or at the County's sole discretion, extend the contract on a month to month bases for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum(s) stated in Exhibit "A."
- 2.2 Payment shall be made upon the County's receipt of a properly completed invoice. Invoices shall contain the following information: Contract number, purchase order number, item numbers, description of supplies and/or services, sizes, quantities, unit prices, extended totals and any applicable sales/use tax.

2.3 INVOICES AND PAYMENTS:

2.3.1 The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following (if applicable) information:

- 2.3.1.1 Company name, address and contact
- 2.3.1.2 County bill-to name and contact information
- 2.3.1.3 Contract Serial Number
- 2.3.1.4 County purchase order number
- 2.3.1.5 Invoice number and date
- 2.3.1.6 Payment terms
- 2.3.1.7 Date of service or delivery
- 2.3.1.8 Quantity (number of days or weeks)
- 2.3.1.9 Contract Item number(s)
- 2.3.1.10 Description of Purchase (product or services)
- 2.3.1.11 Pricing per unit of purchase
- 2.3.1.12 Freight (if applicable)
- 2.3.1.13 Extended price

- 2.3.1.14 Mileage w/rate (if applicable)
- 2.3.1.15 Arrival and completion time (if applicable)
- 2.3.1.16 Total Amount Due

Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.

- 2.3.2 Payment will be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Award the Contractor shall fill out an EFT Enrollment form (to be provided by the Procurement Officer) or as located on the County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/).
- 2.3.3 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in Exhibit "B."
- 3.2 The Contractor shall perform services at the location(s) and time(s) stated in Exhibit "B," or as otherwise directed in writing.
- 3.3 During the Contract term, County shall provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.
- 3.4 Contractor's license and service agreement and related documents are provided in Exhibit "B1".

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting there from, caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

4.2 PROCUREMENT CARD ORDERING CAPABILITY:

It is the intent of Maricopa County to utilize a MasterCard Procurement Card, to place and make payment for orders under the Contract.

4.3 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona

For Contractor:

Gary Borchart, Vice President-Sales
160 Pine Street, Suite 200
San Francisco, CA 94111

4.4 REQUIREMENTS CONTRACT:

4.4.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when County identifies a need and issues a purchase order or a written notice to proceed.

4.4.2 County reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

4.4.3 Contractor agrees to accept oral cancellation of purchase orders.

4.5 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

4.6 TERMINATION FOR DEFAULT:

4.6.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

4.6.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

4.6.3 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract.

4.6.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.7 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.8 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.9 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.10 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

4.11 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

4.12 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.13 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.14 ALTERNATIVE DISPUTE RESOLUTION:

4.14.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.14.1.1 Render a decision;

4.14.1.2 Notify the parties that the exhibits are available for retrieval; and

4.14.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.14.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.14.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.15 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.16 RIGHTS IN DATA:

The County shall own have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.17 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.18 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

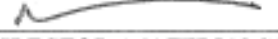

AUTHORIZED SIGNATURE

Jeff Morgan VP Business Development, ELT Inc.
PRINTED NAME AND TITLE

160 Pine Street #200, SF 6 44111
ADDRESS

5/1/08
DATE

MARICOPA COUNTY

BY: 
DIRECTOR, MATERIALS MANAGEMENT

5/14/08
DATE

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:


DEPUTY MARICOPA COUNTY ATTORNEY

5/19/8
DATE

**EXHIBIT A
PRICING**

SERIAL 07116 - RFP

PRICING SHEET: NIGP CODE **9243501**

BIDDER NAME:	<u>ELT, Inc.</u>
VENDOR # :	<u></u>
BIDDER ADDRESS:	<u>160 Pine Street, Suite 200, San Francisco, CA 94111</u>
P.O. ADDRESS:	<u></u>
BIDDER PHONE #:	<u>661-513-0639</u>
BIDDER FAX #:	<u>415-981-9348</u>
COMPANY WEB SITE:	<u>www.elt-inc.com</u>
COMPANY CONTACT (REP):	<u>Gary Borchart, Vice President – Sales</u>
E-MAIL ADDRESS (REP):	<u>gborchart@elt-inc.com</u>

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: YES

ACCEPT PROCUREMENT CARD: N/A

INTERNET ORDERING CAPABILITY: N/A

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: NO

PAYMENT TERMS: BIDDER IS REQUIRED TO SELECT ONE OF THE FOLLOWING.

TERMS WILL BE CONSIDERED IN DETERMINING LOW BID.

FAILURE TO CHOOSE A TERM WILL RESULT IN A DEFAULT TO NET 30.

BIDDER MUST INITIAL THE SELECTION BELOW.

NET 10	<u></u>
NET 15	<u></u>
NET 20	<u></u>
NET 30	<u>X</u>
NET 45	<u></u>
NET 60	<u></u>
NET 90	<u></u>
2% 10 DAYS NET 30	<u></u>
1% 10 DAYS NET 30	<u></u>
2% 30 DAYS NET 31	<u></u>
1% 30 DAYS NET 31	<u></u>
5% 30 DAYS NET 31	<u></u>

1.0 PRICING:

ON-LINE TRAINING CATEGORY/ITEM DESCRIPTION

PRICING/UNIT

Option 3: Workplace Harassment II , EEO and ADA

Year 1 Fees

Content Fee	Includes content for up to 1,200 learners in each year of the 36 month license term for Workplace Harassment II, EEO and ADA courses	\$31,500.00
Customization Fee	<p>For Workplace Harassment II, EEO and ADA</p> <ul style="list-style-type: none"> ▪ Policy Inclusion. Your harassment / discrimination policies are embedded in and are accessible throughout the course. ▪ Ask a Question Icon. Learners can report questions\concerns with directions, phone numbers or email links provided in the “Ask a Question” icon and associated links. ▪ Organization Logo. Your logo will be added to the courses. ▪ Electronic Certification. Before completing the course, learners electronically certify that they have completed the course and have received, read and will follow your policies. ▪ HR 2406 Inclusion. HR 2406 text provided by Maricopa County and placed into the Workplace Harassment and are accessible throughout the course ▪ ADA course customization <ul style="list-style-type: none"> ▪ Delete section 1008-271.swf ▪ Delete section 1008-277.swf ▪ Delete section 1008-238.swf ▪ Add single button in course that pops up a window containing selected text from ADA law content as identified by Maricopa County 	<p>\$1,500.00</p> <p>Waived</p> <p>\$750.00</p> <p>\$1,000.00</p>
Integration Fee	Integration into Maricopa’s Pathlore LMS	\$1,500.00

Year 2 and 3 Fees

License / Maintenance Fee	<ul style="list-style-type: none"> ▪ Waived in Year 1, charged in Years 2 and 3 ▪ Ongoing maintenance and verification of legal content to meet federal and state requirements ▪ Maintenance and upgrade of course technology ▪ On-going maintenance of client course, client data and tracking of course versions. 	\$11,000.00/yr
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Payment Summary

Year One Payment	\$34,750.00
Year Two Payment	\$11,000.00
Year Three Payment	\$11,000.00
<u>Total 3 Year Investment</u>	<u>\$56,750.00</u>
Average annual cost per learner \$5.25 per learner per course	
Pricing for 1st, 2nd, 3rd or 4th block of 200 licenses for Workplace Harassment, EEO and ADA- \$5,250.00 content fee, increase to the annual license & maintenance fee of \$1,837.50. Price is per block	

EXHIBIT B SCOPE OF WORK

Contractor agrees to provide Workplace Harassment II, EEO and ADA on-line management level compliance training course(s) license and maintenance in full compliance with their proposal as submitted, as found below and as also found on EXHIBIT A (Pricing Page). The courses offered include content for up to 1,200 learners in each year of the license term.

2.1.1 Course content shall be developed by attorneys who specialize in this area of practice.

ELT was created by Littler Mendelson, the nation's largest labor and employment law firm. Littler continues to be our exclusive content partner and provides all content for ELT's Workplace Harassment II online compliance course.

2.1.1.1 Contractor shall clearly identify the law firm or attorneys (significant input) who have developed the specific on-line training product offered.

ELT states full compliance, **Vendor Qualifications Section** of proposal provides appropriate information. The **Vendor Qualifications Section** as submitted may be found in the contract file.

2.1.2 Course content shall reflect current federal and Arizona law, without exception.

ELT states full compliance.

2.1.3 Course content shall discuss realistic scenarios that users are likely to encounter (government settings are preferred).

ELT uses a realistic story-based educational design in which your learners follow along and interact with fictional characters who are confronted with workplace situations.

2.1.4 Contractor shall clearly state their ability to commit to updating course content within 60 days, or less, of significant legal developments.

ELT states course content is reviewed on a literally a daily basis by ELT and Littler Mendelson. In the event an update is required, Maricopa County will be notified and given the option of staying with the course version in place or migrating to the updated course version.

Additionally, ELT has committed to creating an entirely new course and workplace harassment learning experience every two years. The County will therefore have access to this course as well in Year of our agreement.

2.1.5 On-line training product(s) offered shall be readily available without delay, for viewing and evaluation purposes.

ELT has provided such indicating full compliance.

2.1.6 Proposer shall define the duration (minutes) of each course offered, by category. Courses exceeding one (1) hour in duration shall have book marking capability available.

ELT states full compliance regarding duration (minutes) and also the course includes bookmarking.

2.1.7 Audio narration shall be accompanied by written text.

ELT states full compliance regarding standard provisions of audio narration and written text.

2.1.8 Navigation shall be clear and easy to follow.

ELT's course is also designed for easy, intuitive navigation. Learners experience a seamless educational experience as they follow the evolving storyline and characters. The course is not fragmented into seldom

used features like “glossaries” and learners are not distracted computer gimmicks used to make up for poor educational design. Images illustrating compliance may be found as originally submitted in the contract file.

2.1.9 Courses shall not require special plug-ins or players.

ELT states that no special plug-ins or players are required for course access.

2.1.10 On-line product shall be PC compatible (fully capable to run on Microsoft Windows XP and Vista Desktop systems) and shall be AICC or SCORM compliant and compatible with PATHLORE LMS and Microsoft SQL Server –based environments.

ELT states full compliance

2.1.11 On-line courses shall be either be loaded on Maricopa County servers or accessed through a content bridge to the vendor site. Proposer shall clearly define the method to be utilized.

ELT courses can be and have been successfully integrated onto Pathlore LMS environments.

2.1.12 Product shall ensure continuous individual user interaction through final testing and course completion.

ELT's Workplace Harassment course first engages learners with story-based educational design that draws them into the story with a real plotline and characters. The course is not merely an online lecture. It is an evolving story that presents learners with real world scenarios and hypotheticals that deliver your message and make sense in today's business environment.

Workplace Harassment also reinforces key lessons with interactive questions that must be resolved before learners proceed. In the standard supervisor course, supervisors complete more than 40 interactive questions and activities. This insures that supervisors are engaged - and stay engaged - throughout the experience.

Finally, learners also "join the story" through special simulation exercises designed for supervisors. These sections present realistic workplace scenarios and then ask learners to decide how to best resolve them.

2.1.13 Product(s) offered shall have frequent mandatory questions or test intervals on topic segments.

ELT states full compliance.

2.1.13.1 Product(s) offered shall provide fully detailed explanation why users’ responses are “right” or “wrong”.

ELT states full compliance.

2.1.13.2 Product(s) offered shall be configured so that users are unable to move forward until they have reviewed the training segment and responded correctly.

ELT states full compliance.

2.1.14 Product(s) offered shall be serious in tone and of a quality level that conveys the importance of the subject matter as well as the County’s commitment to legal compliance.

ELT states full compliance. Teams of Littler Mendelson attorneys were involved in the development of Workplace Harassment II from literally Day One. As a result, the course was developed with eye to both providing your learners with realistic, helpful guidance and in presenting the information in way that communicates the seriousness of your commitment tojuries and regulators.

2.1.15 Product(s) offered shall afford users the ability to interact with onscreen prompts that can expand on each topic, for greater explanation and user understanding.

ELT states full compliance. This course includes more than 40 interactive exercises designed to reinforce key lessons and likewise offers customize Closer Look questions, discussed and illustrated above, which provide an easy, cost-effective way for Maricopa County to provide learners with County-specific guidance and information.

- 2.1.16 Product(s) offered shall track user log-ins, log-offs and completion of training segments and/or entire course(s).**

ELT states full compliance.

- 2.1.17 Course completion shall contain an acknowledgement by the user that he or she:**

- 2.1.17.1 Understands the content in the program;**
- 2.1.17.2 Agrees to abide by legal principals set forth in the course;**
- 2.1.17.3 Acknowledges receipt and acceptance of on topic County policy**

ELT states full compliance.

- 2.1.18 Product(s) offered shall be able to sustain concurrent users – any limitations on the number of concurrent users shall be fully defined in their proposal/response.**

ELT states full compliance.

- 2.1.19 Product(s) offered should not capture specific test scores or personal user information aside from ID number and pass/fail scores.**

ELT states full compliance.

- 2.1.20 Proposer/Respondent shall provide detail regarding their system and application security strategy and the specific defense mechanisms integrated within their solution.**

ELT states full compliance. We understand that this training solution will reside on your system and will be protected by your security precautions.

- 2.1.21 Vendor product shall be customized to the extent that it provides telephone numbers, email addresses, and other ways for employees to report their concerns to the appropriate County departments or managers.**

ELT states full compliance. ELT's proposal includes customization to include county-specific customization under the Questions Icon and to include the County's harassment policy which can also include directions for learners with questions/concerns.

- 2.1.22 Product(s) offered shall preferably use a variety of media elements, including audio, photos, animations and graphics – should not be too text heavy.**

ELT states full compliance.

- 2.1.23 Product(s) offered shall have expansion capability to incorporate County-specific training segments if requested on an individual cost basis.**

ELT states full compliance.

- 2.1.24 Offered product(s) content shall not instruct through the use of legal conclusions (e.g., is this discrimination?) or solicit legal conclusions from users.**

ELT states full compliance.

- 2.1.25 **Content language should be user-friendly – should not exceed 8th grade reading level or use too much ‘legalese’.**

ELT states full compliance.

- 2.1.26 **Proposer/respondent shall fully define their ability to provide regular review and updating of offered product(s) to ensure currency of subject matter.**

Because we were founded by the nation’s largest and most respected employment law firm, ELT has an unmatched ability to create, monitor and update compliance content. Our unique, long term relationship with the more than 650 attorneys at Littler Mendelson means that we are able to review content continuously and update when appropriate. This includes updates necessary because of changes in the law. It also includes updated scenarios that present the kinds of issues that employers are starting to see – before they make it reported case law. This insures that our course is not only legally correct, but the very best way to avoid problems in your workplace and provide learners with guidance on developing issues.

- 2.1.27 **Proposer/respondent shall have a regular process and format in place for assessing user satisfaction. Explain in full detail.**

ELT conducts twice yearly customer satisfaction surveys to receive feedback on our courses and customer service – and to elicit feedback for future course content and design. In our last completed survey, more than 98% of our clients would recommend us to other organizations as a valued compliance partner.

- 2.1.28 **Proposer shall indicate whether it has an “employee version” of the training programs identified in this RFP.**

We do. The employee version of the course is approximately 60 minutes. The supervisor-level course is customizable, with lengths typically varying between 90 and 120 minutes.

- 2.1.29 **Pricing shall be provided/offered on a per-seat basis in the following increments:**

2.1.29.1 **0 to 1200**

2.1.29.2 **Over 1200 in increments of 200**

ELT states full compliance. Pricing provided via **Attachment A**, which may be found in the contract file, as originally submitted. (Final/contract pricing may be found in Exhibit A of this contract)

- 2.1.30 **Proposer shall define in detail installation details, time frame, etc., for use of offered product.**

ELT has provided a sample implementation timeline detailed a 30 day rollout plan as **Exhibit 1**, which may be found as originally submitted in the contract file.

- 2.1.31 **Proposer shall provide full licensing provisions (if any) with their response/submission. Response shall include a “copy” of the proposer’s licensing language.**

Standard ELT License and Service Agreement provided as **Exhibit 2**, which may be found as originally submitted in the contract file.

2.2 **MINMUM PROPOSER QUALIFICATIONS:**

- 2.2.1 ***Minimum two (2) years providing on-line training in the areas identified in the RFP to corporate and institutional customers (do not include beta testing).***

ELT states full compliance and has provided appropriate references. ELT was founded in 1996 and has been providing online compliance solutions since 1999.

- 2.2.2 ***Three customer references requested, one of which shall be from a governmental entity with more than 150 on-line users.***

ELT states full compliance as provided in their **Attachment C**, which may be found as originally submitted in the contract file.

2.2.3 *Proposals shall include information regarding official endorsements, if any, of their specific on-line courses by trade, industry or compliance organizations.*

ELT's Workplace Harassment II course has received the exclusive endorsement of SHRM, the world's largest organization dedicated to Human Resource professionals.

2.2.4 *Proposals shall clearly state whether any of the on-line training courses named in this RFP have ever been validated in the course of a harassment or discrimination claim by the EEOC, state discrimination or equal rights agency, or in a ruling issued by a state or federal court.*

ELT's Workplace Harassment program has been used successfully in response to lawsuits from private parties and the EEOC. A copy of a published Consent Decree expressly validating ELT's training is attached as **Exhibit 3**, which may be found as originally submitted in the contract file.

2.3 USAGE REPORT:

The Contractor shall furnish the County a quarterly usage report delineating the acquisition activity governed by the Contract. The format of the report shall be approved by the County and shall disclose the quantity and dollar value of each contract item by individual unit.

We understand this course will reside on your Pathlore LMS. Accordingly, you will draw reports from that system. ELT will not have direct access to learner data.

2.4 ACCEPTANCE:

Licensor shall provide an acceptance test period (the "Test Period") that commences upon Installation. Installation shall be defined as: a.) the Equipment, if any, is mounted; b.) the Software is installed on the data base server(s) and/or personal computer(s); and c.) implementation team training, if any, is complete. During the Test Period, Customer shall determine whether the Equipment and Software meet the Licensor published electronic documentation, ("Specifications"). The Test Period shall be for 90 days. If Customer has not given Licensor a written deficiency statement specifying how the Equipment or Software fails to meet the Specification ("Deficiency Statement") within the Test Period, the Equipment and Software shall be deemed accepted. If Customer provides a Deficiency Statement within the Test Period, Licensor shall have 30 days to correct the deficiency, and the Customer shall have an additional 60 days to evaluate the Equipment and Software. If the Equipment or Software does not meet the Specifications at the end of the second 30 day period, either Customer or Licensor may terminate this Contract. Upon any such termination, Customer shall return all Equipment and Software to Licensor, and Licensor shall refund any monies paid by Customer to Licensor therefore. Neither party shall then have any further liability to the other for the products that were the subject of the Acceptance Test.

ELT states full understanding and agreement with Maricopa County Acceptance language.

2.5 FACILITIES:

During the course of this Contract, the County shall provide the Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its obligation enumerated herein.

We do not anticipate needing access to your facilities. Course integrations are typically handled by your in-house IT team with support from ELT's implementation team.

2.6 **TRAINING:**

The Contractor shall provide any necessary training for key County personnel in the use of the “training system” offered. Training offered by the Contractor shall be clearly stated/defined in their response to this RFP.

Training is typically not required when the course is integrated onto a client’s LMS, since reporting and other functionality is handled by the LMS. ELT’s implementation and customer.

2.7 **IMPLEMENTATION TIMELINE:**

Timeline	Activity	ELT	Client
Day 1	ELT delivers customization worksheet and other customization job aids	X	
	Kickoff meeting to introduce ELT Implementation Manager, review required customizations, review customization worksheet, define project milestones and schedule.	X	X
Day 1	Complete customization worksheet, gather and/or create customization materials.		X
	Deliver 'vanilla' course for testing	X	
Day 8	Deliver all customization materials to Implementation Manager.		X
	Review all materials, document details of customization work and submit to production	X	
	Complete testing of 'vanilla' course	X	X
Day 8	Begin Production to create Customized Course	X	
Day 18	Production work is complete	X	
	Customized course posted on ELT LMS for review	X	
Day 18	Identify review group		X
	Meeting to Review of Customized Course	X	X
	Changes made if required	X	
Day 24	<i>ELT delivers modified course (if required)</i>	X	
	<i>Client reviews and signs-off on course (if required)</i>		X
Day 25	Deliver customized course files	X	
Day 26	Integrate customized course on target LMS	X	X
Day 30	Launch		X

EXHIBIT B1
ELT License, Services Agreement and related documents

LICENSEE	LICENSE TERM
Licensee Name & Address:	License Term (in months): 36 Date of Agreement: tbd

LICENSED COURSES AND LICENSE FEES				
Online Course Name	Commencement Date	Number of Licensed Users	Year 1 License Fee	
Workplace Harassment II, ADA, EEO	June 3 rd , 2008	1,200 of each course	\$31,500.00	
	Total Licensed Users or Seats:	3,600	Total Year 1 License Fee:	\$31,500.00

ADDITIONAL SERVICE FEES		
Customization Requested	See Exhibit D	\$1,750.00
Set-Up Fee Delivery Method: Pathlore LMS-Licensee	See Exhibit C	\$1,500.00
<i>Annual License & Maintenance (L&M) Fee. Includes content upgrades, maintenance, support and annual Licensed Users</i>	<i>See Exhibit C</i>	\$11,000.00 <i>(L&M Fee waived in Year 1; Payable in Subsequent Years.)</i>

PAYMENT TERMS
<p>The fees will be invoiced as follows:</p> <p>\$34,750.00 will be invoiced within five (5) days of the execution of this agreement by both parties.</p> <p>\$11,000.00 will be invoiced eleven (11) months from the earliest Commencement Date listed above.</p> <p>\$11,000.00 will be invoiced twenty-three (23) months from the earliest Commencement Date listed above.</p> <p>All fees are payable on or before thirty (30) days from date invoice is received by Licensee.</p>

ACKNOWLEDGEMENT AND ACCEPTANCE	
<p>In witness hereof, the undersigned acknowledge their acceptance of the Fees and Payment Terms set forth above. The undersigned also acknowledge their acceptance to the terms and conditions set forth elsewhere in this License Agreement. The undersigned acknowledge that the license term commences with the Commencement Date and terminates thereafter based on the License Term as set forth above.</p>	
<p>Employment Law Training, Inc. (Licensor):</p> <p>By:</p> <p>Name: Michael Korcuska</p> <p>Title: Vice President, Operations</p>	<p>(Licensee):</p> <p>By:</p> <p>Name:</p> <p>Title:</p>

ELT LICENSE AND SERVICES AGREEMENT Terms and Conditions

THIS AGREEMENT is entered into as of the date set forth on the signature page and between EMPLOYMENT LAW TRAINING, INC., a Delaware corporation with its primary place of business at 160 Pine Street, Suite 200, San Francisco, CA 94111, (herein referred to as "Licensor" or "ELT") and Maricopa County., on behalf of itself and its Affiliates (herein collectively referred to as "Licensee"). For purposes of this Agreement the following terms shall be defined as follows: "Affiliates" shall mean, with respect to Licensee, any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or common control with Licensee; "Control" shall mean the power to direct the management of the affairs of the entity and "Ownership" shall mean the beneficial ownership of more than 30% of the equity of the entity." See Exhibit E for specific terms and conditions that apply to Affiliates.

WHEREAS, Licensor is the developer and owner of proprietary online training courses and is the authorized distributor of additional third party online training courses, Licensee desires to obtain a license to use the online courses listed on page 1 of this Agreement (herein referred to as the "Online Courses") under the terms and conditions of this Agreement;

NOW, THEREFORE, with respect to the Online Courses the parties agree as follows:

1. Rights Granted, Delivery of Online Courses, Services and Limitations.

- 1.1. **Grant of License.** Subject to the payment of the license fees due hereunder, and in compliance with the terms and conditions of this Agreement, Licensor grants to Licensee the nonexclusive, nontransferable right and license to access, use and display the Online Courses solely for its own internal use. No right is granted to modify the Online Courses in any way, or to create derivative works of the Online Courses without the written consent of Licensor. Course changes or modifications to the Online Courses as a result of current or future customization by Licensee shall not be considered derivative works. Licensee shall have no right to sublicense its rights to use the Online Courses whether to an affiliate or third party, without the written consent of Licensor. Licensee's Affiliates will have access to and will be registered users, but will not be permitted to sublicense the Online Courses. This will not preclude any auditors from accessing the Online Course(s) for purposes of auditing the Online Courses. In addition, subcontractors who meet the definition of a Licensed User will have access to the Online Courses.
- 1.2. **Licensed Users.** The number of Licensed Users who may access the Online Courses annually is set forth on the first page of this Agreement. A "Licensed User" is defined as a user who starts a licensed Online Course; a Licensed User does not include a user who is only enrolled in a licensed Online Courses. A Licensed User may access a licensed Online Course at any time during the term of this Agreement, including after the Licensed User has completed a licensed Online Course. A user who is enrolled in and starts the same Online Course on a subsequent occasion, thereby creating an additional training record, consumes an additional Licensed User. In the event Licensee's use exceeds the number of Licensed Users as set forth on Page 1, Licensee shall pay Licensor the Additional License Fees set forth on Exhibit B attached hereto.
- 1.3. **Delivery of Online Courses.** Licensor generally, but not always, provides three (3) different methods for Licensee's users to access or take the Online Courses: (1) Licensor internet web site delivered through its server residing at Licensor's principal place of business or at such other server site as determined by Licensor, (2) Licensee's internal intranet web site delivered through Licensee's local or wide area network and (3) CD ROM media. Licensee's selected delivery method is outlined in Exhibit C ("Selected Delivery Method"). For CD ROM media delivery, Licensor will provide Licensee with one master CD ROM. The delivery of the CD ROM media will be made to a single address designated by Licensee. If Licensee elects to deliver the Online Courses via CD ROM to some Licensed Users, Licensee is solely responsible for recording completions if the Online Courses are taken directly by Licensed Users on CD ROM, or the creation and maintenance of classroom training attendance rosters if the Online Courses are taken with a group of Licensed Users in an instructor-led live session. Upon Licensor's request, Licensee will provide a full written report of the Licensed Users who are taking or who have completed the Online Courses via CD ROM. Licensee will pay for the cost and shipping of any

CD ROMs. Licensee understands that the content on the CD ROMs is static and is not subject to automatic updates, as detailed further in Exhibit C.

- 1.4. **Customization.** Licensor offers various customization options. These options, as set forth on the first page of this Agreement and Exhibit D, are limited to the version(s) of the Online Courses offered to Licensee and Online Course delivery method selected by the Licensee. Various forms of customization may require certain assistance or materials from Licensee, including, but not limited to photographs, graphics and audio content. Licensee agrees to provide such assistance and materials as reflected in Exhibits D attached hereto.

Any materials, photographs, graphics, audio content or any information provided by Licensee (collectively "Licensee Materials") may be protected by copyright pursuant to United States copyright laws, international conventions, and other copyright laws. The Licensee Materials are provided to Licensor solely for the purpose of fulfilling the terms of this Agreement. All Licensee Materials are owned and controlled by Licensee and Licensor shall abide by any and all additional copyright notices, information or restrictions contained in any Licensee Materials. Copying, using or storing any Licensee Materials for use other than to customize Online Courses for Licensee is expressly prohibited without the prior written consent of Licensee.

- 1.5. **Additional Restrictions on Use.** Licensee shall not use the Online Courses for commercial time-sharing, rental or service bureau use.
- 1.6. **Online Course Content.** The Online Courses and all content displayed or provided in the Online Courses, excluding Licensee's Material (the "Content") is protected by copyright pursuant to U.S. copyright laws, international conventions, and other copyright laws. The Content is only for the internal, noncommercial use of Licensee employees or Licensee's contractors, who are subject to written confidentiality agreements, or regulators. All material contained in the Online Courses is protected by copyright, and is owned and controlled by Licensor or its licensor, and Licensee shall abide by any and all additional copyright notices, information or restrictions contained in any Content.
- 1.7. **Reservation of Rights.** Except as expressly granted in this Agreement, Licensee shall have no other rights of any kind in the Online Courses or Content. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppels or otherwise, a license to any of Licensor's or any third party content provider's intellectual property or proprietary technology other than the use of the Online Courses and Content in accordance with the terms of this Agreement. Licensee hereby acknowledges that Licensor may monitor Licensee's use of the Online Courses to assist Licensee in managing its training effort and to ensure Licensee's compliance with the terms and conditions of this Agreement. If Licensee is hosting the Online Courses, Licensee will provide Licensor with quarterly reports showing the number of Licensed Users who have started the Online Courses and the number of Licensed Users who have completed the Online Courses. The first quarterly report is due to Licensor one hundred and eighty (180) days from the earliest Commencement Date set forth on page one of this Agreement. Subsequent quarterly usage reports are due to Licensor every ninety (90) days thereafter. Except as expressly granted in this Agreement, Licensor shall have no other rights of any kind to the Licensee Materials. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppels or otherwise, a license to any of Licensee's intellectual property or proprietary technology other than the use of the Licensee Materials described herein. Licensor hereby acknowledges that Licensee may monitor Licensor's use of the Licensee Materials in order to ensure compliance with the terms and conditions of this Agreement.

2. Fees and Payments

- 2.1. **Fees.** In consideration for the grant of the rights and license contained hereon, Licensee shall pay Licensor all fees indicated on page 1 of this Agreement.
- 2.2. **Taxes.** All fees are in United States dollars and exclude any applicable taxes. Licensee shall pay, indemnify and hold Licensor harmless from all sales, use, value added or other taxes of any nature, other than taxes on Licensor's net income, including penalties and interest, employment of personnel or taxes from which Licensee is exempt, and all government permit or license fees assessed upon or with respect to any fees due under this Agreement, whether such taxes or

fees are assessed by federal, state, foreign, or any other governmental taxing authority, wherever assessed.

3. Ownership; Warranty; Liability Limitation.

3.1. Ownership. Except for the licenses granted to Licensee hereunder, and other third party software incorporated into the Online Courses, Licensee acknowledges that Licensor and Licensor's third party content providers own and shall retain all respective proprietary rights, including all patent, copyright, trade secret, trademark, trade name and other proprietary rights, in and to the Online Courses and Content. Except for the license granted to Licensor hereunder, Licensor acknowledges that Licensee owns and shall retain all proprietary rights, including all patent, copyright, trade secret, trademark, trade name and other proprietary rights, in and to the Licensee Materials. Licensee acknowledges that the license granted under this Agreement does not provide Licensee with title to or ownership of the Online Courses, but only with a right of limited use under the terms and conditions of this Agreement. Except as otherwise provided herein, under no circumstances shall Licensee sell, license, sublicense, publish, display, distribute, assign or otherwise transfer to a third party the Online Courses, any copy thereof, in whole or in part, without Licensor's prior written consent, which consent may be withheld in Licensor's sole discretion.

3.2. Warranties. Licensor shall use commercially reasonable efforts to ensure that the Online Courses provide Licensee with current and complete information regarding the subject matter of the Online Courses. However, despite Licensor's efforts to provide the highest level of accuracy with respect to the Online Course content, there can be no assurance that the Online Courses will be error-free and always accurate, especially with enactment of new statutes and court rulings. Licensor represents and warrants that it or its third party content providers are the owners of, or have all necessary rights, to the Online Courses and to deliver the Online Courses to Licensee under the terms of this Agreement. Licensor represents and warrants that it will use good faith efforts, throughout the term of this Agreement, to sustain the quality, quantity, and accessibility of the Online Courses and the Designated Website Services it offers, and to ensure that its offerings cover current releases, at no less than the level of quality of its Online Course offerings as of the date of this Agreement. Licensor and Licensee agree to make good faith efforts to attempt to resolve 'performance issues' prior to proceeding to Arbitration as set forth in Section 5.3 below.

Licensor and its third party content providers represent and warrant that no copy of the Online Courses provided to Licensee contains or will contain neither any Self-Help Code nor any Unauthorized Code. As used in this Agreement, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the program. As used in this Agreement, "Unauthorized Code" means any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access; to disable, erase, or otherwise harm software, hardware, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Licensee acknowledges that, except as set forth above, the Online Courses are provided "AS IS" without further warranties of any kind, either express or implied, and to the fullest extent of applicable law, Licensor and its third party content providers make no other warranties with respect to the Online Courses.

3.3. Legal Advice. Licensor is in the business of providing employment law training through the sale of training and education products, computer-based training and education applications and live-training and educational services. Licensor is not in the business of providing legal advice or legal services, and the protections of the lawyer-client relationship do not exist with respect to the training services provided by Licensor to Licensee. The information and materials provided by Licensor are designed to be authoritative in regard to the subject matter of the training without implied warranties. Licensor strongly encourages Licensee to consult legal counsel of its choice on specific matters involving employment law, and important personnel policies and practices prior to adoption or implementation.

3.4. Limitation of Liability. UNDER NO CIRCUMSTANCES, EXCEPT AS SET FORTH HEREIN IN § 3.5, INCLUDING NEGLIGENCE, WILL EITHER PARTY, ITS DIRECTORS, EMPLOYEES, THIRD PARTY CONTENT PROVIDERS OR ANYONE ELSE INVOLVED IN ADMINISTERING,

MAINTAINING OR PROVIDING THE ONLINE COURSES OR LICENSEE'S MATERIAL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE ONLINE COURSES OR LICENSEE'S MATERIAL, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR LOST PROFITS, OR DAMAGES THAT RESULT FROM MISTAKES, OMISSIONS, SERVICE INTERRUPTIONS, LICENSOR SERVER DOWNTIME, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE ONLINE COURSES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 3.5. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting there from, caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The scope of this indemnification does not extend to the sole negligence of County. To the extent that there is any conflict between §§ 3.4 and 3.5, § 3.5 will control.

In the event that any claim is made or any action or proceeding is instituted that alleges that the Online Courses and/or any portion thereof infringes any patent or copyright, constitutes misappropriation of a trade secret, or violates any other intellectual property or other proprietary right of any third party, Licensor shall defend, indemnify and hold Licensee harmless from all damages, awards, cost and expenses (including reasonable attorney fees) associated therewith; provided, however, that Licensee promptly notifies Licensor of such claim, action or proceeding and co-operates with Licensor in its defense or settlement. If Licensee's use of the Online Courses is enjoined or threatened, Licensor shall use its best efforts to, in the priority order indicated, (1) procure for Licensee the right to continue using the Online Courses; (2) modify the Online Courses so as to render it non-infringing while remaining functionally equivalent to the Online Courses at the time the claim is made; or (3) provide substitute non-infringing Online Courses of substantially equal utility acceptable to Licensee at no additional charge to Licensee, consistent with Licensor's obligations as stated in this Agreement.

In the event that any claim is made or any action or proceeding is instituted that alleges that the Licensee Materials and/or any portion thereof infringes any patent or copyright, constitutes misappropriation of a trade secret, or violates any other intellectual property or other proprietary right of any third party, Licensee shall defend, indemnify and hold Licensor harmless from all damages, awards, cost and expenses (including reasonable attorney fees) associated therewith; provided, however, that Licensor promptly notifies Licensee of such claim, action or proceeding and co-operates with Licensee in its defense or settlement.

4. Terminations

- 4.1. **Termination.** Each party shall have the right to terminate this Agreement and the license granted herein upon the occurrence of any of the following events: (i) in the event Licensee fails to pay any undisputed (see definition of 'disputed') fees due hereunder and such failure is not cured within fifteen (15) business days after written or electronic notice; (ii) in the event the other party fails to comply with any of the terms and conditions of this Agreement and such default has not been cured within fifteen (15) days after written or electronic notice to the other party; or (iii) in the event the other party (A) terminates or suspends its business, (B) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (C) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (D) has wound up or liquidated, voluntarily or otherwise. A "Disputed Fee" is a fee disputed in good faith over Licensor's failure to perform material terms of this Agreement. Licensor and Licensee agree to

make good faith efforts to attempt to resolve Disputed Fees prior to proceeding to Arbitration as set forth in Section 5.3 below.

- 4.2. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, and by either party, all rights and licenses granted to Licensee under this Agreement shall immediately terminate. Termination shall not affect Licensee's obligation to pay all undisputed fees and charges accrued or earned by Licensor prior to termination.
- 4.3. **Survival.** The following sections of this Agreement shall survive the expiration or termination of this Agreement for any reason: Sections 2, 4 and 5.

5. General.

- 5.1. **Entire Agreement.** All previous agreements and arrangements (if any) made by the parties and relating to the subject matter hereof are hereby superseded and this Agreement, including its Exhibits, embodies the entire understanding of the parties, there being no promises, terms, conditions or obligations, oral or written, express or implied, other than those contained herein. This Agreement may only be amended by a written document signed by authorized representatives of both parties.
- 5.2. **Notice.** Any written notice required to be given hereunder shall be in writing and shall be given by personal delivery (including by professional courier) to the address of the Party contained in this Agreement, or such other address as such party may have notified the other of pursuant to this Section 5.2. In addition to any notice sent to Licensee, a copy will be sent to:

Stan Fisher
Senior Procurement Officer
Maricopa County Arizona
320 W. Lincoln Street
Phoenix, AZ 85003-2494
602-506-3274

Such notice shall be deemed to have been given upon the date of such delivery.

5.3. Arbitration.

5.3.1. ALTERNATIVE DISPUTE RESOLUTION:

5.3.1.1. After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

5.3.1.2. Render a decision;

5.3.1.3. Notify the parties that the exhibits are available for retrieval; and

5.3.1.4. Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

5.3.2. Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for

attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

- 5.3.3. Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.
- 5.4. **Choice of Law and Venue; Attorneys Fees.** The parties agree that this Agreement and the rights and obligations hereunder will be governed by and construed in accordance with the laws of the State of Arizona, without regard to its provisions concerning the applicability of the laws of other jurisdictions. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the federal and state courts within Maricopa County, Arizona, and Licensee hereby consents to the personal and exclusive jurisdiction and venue of these courts. In any action brought by either party to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover direct and actual reasonable attorneys' fees and costs.
- 5.5. **Transfer and Assignment.** Neither party may assign or sublicense any of its rights or obligations hereunder, except to assign a parent, Affiliate, or by merger or acquisition, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.
- 5.6. **Force Majeure.** Neither party shall be liable for any failure to perform any of its obligations hereunder (other than the payment of money) which results from act of God, the elements, fire, flood, component shortages, force majeure, riot, insurrection, industrial dispute, accident, war, embargoes, legal restrictions, power outages, service interruptions to Internet connectivity or any other cause beyond the reasonable control of the party.
- 5.7. **Severability.** If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of said provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement which shall remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by either party. In such event, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement that most nearly affects the parties' intent in entering into this Agreement.
- 5.8. **Confidentiality.** The parties agree that the terms and conditions of the Mutual Non-Disclosure Statement, hereto attached as Exhibit F, executed by the parties shall remain in full force and effect during the terms of this Agreement and for the period three years after the termination of this Agreement.
- 5.9. **No Waiver.** No waiver of any term or condition of this Agreement shall be valid or binding on a party unless the same has been mutually assented to in writing by both parties. The failure of a party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a party to enforce each and every such provision thereafter.

TECHNICAL REQUIREMENTS

Network Connection Requirements

Courseware runs from the Internet or an intranet (modem, Ethernet, or wireless network adapter required).

- ☐ Audio Version - Dial-Up (48kbps) required, Broadband (128kbps or faster) recommended
- ☐ Silent Version - Dial-Up (28.8kbps or faster)

ELT can provide course size/duration information for specific courses upon request.

Courseware Requirements

The configurations below have successfully passed QA testing with the latest ELT courseware. Additional configurations may work but are not formally supported.

All ELT courseware requires Flash Player 6 and minimum display resolution of 800 by 600 pixels. Audio versions of the courseware require a sound card and speakers or headphones. For processor speed and RAM requirements, see the requirements for the intended browser and Flash Player.

The following Operating System/Browser configurations are supported:

Windows 98 - Windows XP SP2

- ☐ Internet Explorer 5.0, 5.5, 6.0, 7.0
- ☐ Firefox 1.0, 2.0
- ☐ Netscape 7

Mac OSX

- ☐ Safari 1.2
- ☐ Netscape 7

Linux **

- ☐ Mozilla 1.4 - 1.6
- ☐ Netscape 7

Solaris **

- ☐ Mozilla 1.2
- ☐ Netscape 7

***Due to the variety of Linux/Solaris configurations available, it is highly recommended that all courseware be tested on intended platforms prior to launch. ELT cannot guarantee that all Linux/Solaris configurations will be supported.*

Licenser Learning Management System (LMS) Requirements (If Applicable)

For learner access, all of the configurations listed under "Courseware Requirements" are supported. Additionally, learner's browsers must have session cookies and SSL enabled.

For administrative functions of the LMS, the following Operating System/Browser configurations are officially supported:

Windows 98 - Windows XP SP2

- ☐ Internet Explorer 5.0, 5.5, 6.0
- ☐ Cookies and SSL enabled

Browser and Operating System support will change over time.

FEES FOR RENEWAL AND ADDITIONAL USAGE

Renewal

Following the expiration of the License Term set forth on Page 1 of this Agreement, Licensee renewal of this Agreement for an additional 36 month term. The renewal fee will not exceed \$53,000.00 with an annualized adjustment for CPI.

Additional Use

If Licensee requires additional licenses during the Term of this Agreement, Licensee can purchase additional licenses at the following rate:

For licenses purchased in license year 1 of the agreement:
\$14.86 (includes year 2 and 3 licenses)
For licenses purchased in license year 2 of the agreement:
\$11.81 (includes year 3 licenses)
For licenses purchased in year 3 of the agreement:
\$8.75 (one-time license)

A minimum of 50 additional Licensed Users must be purchased. All of the terms of this Agreement will apply to the additional Licensed Users.

SELECTED DELIVERY METHOD – SETUP, CUSTOMER SERVICE, MAINTENANCE AND UPGRADE POLICIES

Licensee Hosted

Licensee may access the Online Course(s) by Internet or Intranet through the use of Licensee's standards compliant (AICC or SCORM 1.2) learning management system ("Licensee's LMS"). Licensee's LMS will launch, track and perform data management for the Online Course(s), including tracking Licensed Users' access to and completion of all Online Courses throughout the License Term. Licensee's LMS can be hosted by Licensee or be hosted by a third party. The Online Course(s) will also be hosted by Licensee's LMS.

Licensor will provide up to sixteen (16) hours of integration labor for deploying Licensor's Online Course(s) on Licensee's LMS. Setup applies to a single installation of the Online Course(s). Any future changes to Licensee's LMS or system configuration may result in integration fees at the rate of \$200.00/hour.

Customer Support Services

Licensor shall provide the following customer services during the License Term:

- a) **Implementation manager.** Licensor will provide an implementation manager who will be responsible for ensuring the course customizations are completed correctly and integrating the courseware on the Licensee's standards compliant LMS.
- b) **Technical support.** Technical support will be available Monday through Friday, 6:00 am to 6:00 pm PT. If technical support is needed, Licensor will make best efforts to respond within four (4) business hours. Onsite support will be available when necessary and at the discretion of Licensor. Licensee will designate allowable technical support contacts. Licensor will provide Tier 2 support for Licensed Users, and Tier 1 and Tier 2 support for Training Administrators. Licensee will provide Tier 1 support for Licensed Users.

Tier 1 support includes:

- The initial contact with the Licensed User who is having a problem and documentation of that problem
- Ensuring that the Licensed User has a supported desktop configuration and appropriate network access
- Attempted resolution of simple problems which include:
 - Incorrect access information or login credentials
 - Improper browser configuration (*e.g.* Flash not installed, cookies not enabled).
 - Pop-up blocker preventing the course from launching.
- Escalating issues to Tier 2 support with reasonable documentation.

Tier 2 support includes all support issues not readily resolvable by Tier 1 support.

Maintenance Policy

Online Course Content Upgrades. For the purposes of this Agreement, "Course Content" includes, but is not limited to the text, audio, graphics and animations that incorporate the Online Courses' legal, practical, instructional and entertainment-based learning elements. The Licensor may from time to time make changes to the Online Course Content due to changes in the law (the "Content Upgrades").

Licensor shall provide the following maintenance services during the License Term:

- a) **Online Course Content Upgrades.** "Course Content" includes, but is not limited to the text, audio, graphics and animations that incorporate the Online Courses' legal, practical, instructional and entertainment-based learning elements. Licensor may from time to time make changes to the Online

Course Content due to changes in the law. Licensor will make best efforts to notify Licensee a minimum of five (5) business days prior to said change.

- b) **Online Course Technology Upgrades.** Licensor may from time to time make Technology Upgrades. “Technology Upgrades” include, but are not limited to, changes to the code, programming, processes, architecture, and dependant components utilized in the functionality of the Online Course(s). Licensor will make best efforts to notify Licensee a minimum of five (5) business days prior to a substantial change. Changes may be required for the following reasons:
- New releases of underlying technologies – New browsers, operating systems, and technologies that the Online Course(s) depend on are released and adopted by Licensor’s customers.
 - Improved system checks and configurations – Technology and environments vary significantly across end user systems. Licensor provides system check and configuration capabilities to prevent technology and performance problems. These checks and configurations are updated as needed.
 - Updates that improve download performance – Licensor constantly looks for ways to improve the quality and download performance of the Online Course(s).
 - Changes in communication protocol – AICC may change or update the communication protocol that in turn may require updates to the Online Courses.
- c) **Upgrade delivery.** Licensor will make available to Licensee the upgraded Online Course(s) via electronic means. Licensee will be responsible for implementing the upgraded Online Course(s) into its LMS or other appropriate environment. Licensor reserves the right to discontinue support of previous versions of the Online Course(s) upon such upgrade.

Licensee Hosted

Licensee may access the Online Course(s) by Internet or Intranet through the use of Licensee's standards compliant (AICC or SCORM) learning management system ("Licensee's LMS"). Licensee's LMS will launch, track and perform data management for the Online Course(s), including tracking Licensed Users' access to and completion of all Online Courses throughout the License Term. Licensee's LMS can be hosted by Licensee or be hosted by a third party. The Online Course(s) will also be hosted by Licensee's LMS.

Licensor will provide up to sixteen (16) hours of integration labor for deploying Licensor's Online Course(s) on Licensee's LMS. Setup applies to a single installation of the Online Course(s). Any future changes to Licensee's LMS or system configuration may result in integration fees at the rate of \$200.00/hour.

Maintenance Policy

Online Course Content Upgrades. For the purposes of this Agreement, "Course Content" includes, but is not limited to the text, audio, graphics and animations that incorporate the Online Courses' legal, practical, instructional and entertainment-based learning elements. The Licensor may from time to time make changes to the Online Course Content due to changes in the law (the "Content Upgrades").

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- a) **Online Course Content Upgrades.** "Course Content" includes, but is not limited to the text, audio, graphics and animations that incorporate the Online Courses' legal, practical, instructional and entertainment-based learning elements. Licensor may from time to time make changes to the Online Course Content due to changes in the law. Licensor will make best efforts to notify Licensee a minimum of five (5) business days prior to said change. Licensor reserves the right to change any aspect of the Online Course(s) at any time.
- b) **Online Course Technology Upgrades.** Licensor may from time to time make Technology Upgrades. "Technology Upgrades" include, but are not limited to, changes to the code, programming, processes, architecture, and dependant components utilized in the functionality of the Online Course(s). Licensor will make best efforts to notify Licensee a minimum of five (5) business days prior to a substantial change. Changes may be required for the following reasons:
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REQUESTED CUSTOMIZATION AND MEDIA SPECIFICATIONS

For Workplace Harassment II, EEO and ADA

- **Policy Inclusion.** Your harassment / discrimination policies are embedded in and are accessible throughout the course.
- **Ask a Question Icon.** Learners can report questions\concerns with directions, phone numbers or email links provided in the “Ask a Question” icon and associated links.
- **Organization Logo.** Your logo will be added to the courses.
- **Electronic Certification.** Before completing the course, learners electronically certify that they have completed the course and have received, read and will follow your policies.
- **HR 2406 Inclusion.** HR 2406 text provided by Maricopa County and placed into the Workplace Harassment and are accessible throughout the course
- **ADA course customization**
 - **Delete section 1008-271.swf**
 - **Delete section 1008-277.swf**
 - **Delete section 1008-238.swf**
 - Add single button in course that pops up a window containing selected text from ADA law content as identified by Maricopa County**

Customization fees are paid once according to the payment terms set forth on Page 1 of this agreement. Additional customization fees will only be incurred if Licensee makes subsequent changes to its customization, or if Licensee requests additional customization.

MEDIA SPECIFICATIONS

Delivery. Licensor prefers that all media files be delivered on a CD or electronically via FTP or email.

IMAGES:

Logos. In order to incorporate Licensee’s logo into the Online Courses, Licensor needs an electronic version of the logo with text converted to paths and saved as a full-color Adobe Illustrator file.

Photos. Licensee may only provide images to which it owns the copyright or has secured the legal rights for reproduction. Licensor will accept original artwork, only (no photocopied reproductions, printed brochures, books, newspapers, etc.).

Licensee should adhere to the following photo guidelines:

- Licensor strongly recommends using only professional-quality images to maintain the look and feel of the Online Course(s).
- Wherever possible, photos should be framed horizontally. Most Online Course images are horizontal, so horizontal images are much easier to work with.
- Group portraits should contain no more than three individuals.
- Product photos should contain no more than three items; individual product shots are preferred.
- Because of image size limitations in the Online Course(s), panoramic photos (e.g., buildings, overviews of factory work areas, aerial photographs) are discouraged.
- Still-frame image grabs from videotapes are strongly discouraged.

The following image formats are acceptable: JPEG, TIF, PSD

TEXT

Scriptwriting. For customization options that require new interactive scripts (e.g., Custom CEO/Intro Screen option), Licensee must write to the script templates, as provided by Licensor. All text must be spell-checked prior to sending files to Licensor. All text must be sent as Microsoft Word files.

AUDIO

Recording. When recording audio, Licensee should adhere to the following guidelines:

- Audio should be recorded in a professional recording studio.
- PCM 44, 100Hz, 16 bit, mono
- (4) 15 second Wave files edited and burned onto a CD.
- Licensee should, when possible, use professional talent. Licensee will only provide audio files for which Licensee has obtained a model release for inclusion in the Online Course(s).

Licensor prefers that audio files be delivered on a CD, preferably a hybrid CD (readable by both PCs and Macs) or electronically via FTP or Email.

LICENSEE AFFILIATES

The following terms and conditions apply to Licensee's Affiliates:

1. For each Affiliate for which Licensee purchases Online Courses and for which Licensee requests a separate Training Portal, separate entries for associated License Fees and Additional Service Fees must be set out on page 1 of this Agreement.
2. For each Affiliate for which Licensee purchases Online Courses and for which Licensee requests a separate Training Portal, Licensor will establish a separate training site.
3. For each Affiliate for which Licensee purchases Online Courses and for which Licensee requests a separate Training Portal (in the case of Licensor Hosted Delivery Method) or Integration (in the case of Licensee Hosted Delivery Method), Licensee will pay an additional set-up or integration fee as specified on page one of this agreement.
4. For each Affiliate for which Licensee purchases Online Courses, Licensee must detail any requested customization (see Exhibit D), and pay all associated customization fees.

**EMPLOYMENT LAW TRAINING, INC.
MUTUAL NONDISCLOSURE STATEMENT**

THIS AGREEMENT (the "Agreement") is made between Employment Training, Inc., a corporation organized under the laws of California and having a principal place of business at 160 Pine Street, Suite 200, San Francisco, CA 94111, and **Maricopa County Arizona 320 W. Lincoln Street Phoenix, AZ 85003-2494**

In consideration of the mutual promises and covenants contained in this Agreement, the parties' discussions and any access to Confidential Information, as described below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. "Confidential Information" means nonpublic information that either of the parties hereto designates as being confidential, or which due to the nature of the information or the circumstances surrounding disclosure, ought to be treated as confidential. "Confidential Information" includes, without limitation, information relating to the parties' respective past, present, or future research, financial results and projections, costs and prices, customers, suppliers, employees, consultants, technologies, technical and business strategies, marketing and promotion strategies, released or unreleased software or hardware products, and trade secrets, as well as any information received from others that either party is obliged to treat as confidential.
2. The party receiving Confidential Information (the "Recipient") may use the Confidential Information only in connection with our discussions and efforts in furtherance of the following purpose: To implement the online training programs listed on page 1 of this agreement at Maricopa County. The Recipient will not, at any time, make any use of the Confidential Information for any other purpose.
3. The parties shall take commercially reasonable and appropriate precautions to protect the confidentiality of each other's Confidential Information. Each party shall use at least the same degree of care to avoid unauthorized disclosure or use of the other's Confidential Information as it employs with respect to its own Confidential Information of like kind.
4. Confidential Information shall at all times remain the property of the party disclosing such information (the "Disclosing Party"). No license under any trade secrets, copyrights, or other rights is granted by this Agreement or any disclosure of Confidential Information hereunder.
5. Access to Confidential Information shall be restricted to those of each party's employees engaged in a use permitted hereby. It is understood that, subject to the terms of this Agreement, personnel of Employment Law Learning Technologies' worldwide organization may have access to Confidential Information in connection with the use permitted under this Agreement and for internal quality assurance and consultation purposes, provided that all such personnel shall be bound by this Agreement or substantially the same terms.
6. Except for copies made for purpose(s) authorized in this Agreement, Confidential Information of the Disclosing Party may not be copied or reproduced by the Recipient without the Disclosing Party's prior written consent.
7. All Confidential Information made available hereunder, including all copies, notes, summaries, and abstracts thereof, shall be returned to the Disclosing Party or destroyed upon request by the Disclosing Party, and certified in writing as having been done; however, Employment Law Learning Technologies, Inc. may retain, subject to this agreement, copies of the Confidential Information required for internal record keeping purposes and for compliance with applicable professional standards.
8. Nothing in this agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (A) previously known to it, (B) independently developed by it without use of the Disclosing Party's Confidential Information, (C) acquired by it from a third party which was not, to the Recipient's knowledge, under an obligation to the Disclosing Party not to disclose such information, or (D) which is or becomes publicly available through no breach by the Recipient of this Agreement.
9. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other party, the Recipient shall promptly notify the Disclosing Party

and tender to it the defense of such demand. Unless the demand shall have been timely limited, quashed or extended, the Recipient shall thereafter be entitled to comply with such demand to the extent permitted by law. If requested by the party to whom the defense has been tendered, the Recipient shall cooperate (at the expense of the requesting party) in the defense of a demand.

10. Nothing in this Agreement shall prohibit or restrict either party's right to develop, use, or market products or services similar to or competitive with those of the other party disclosed in the Confidential Information as long as it shall not thereby breach this Agreement. Each party acknowledges that the other may already possess or have developed products or services similar to or competitive with those of the other party disclosed in the Confidential Information. Each party shall in all events remain free to use in the course of its business its general knowledge, skills and experience incurred before during or after the activities hereunder.
11. Any suggestions, feedback, or other information from the Recipient concerning Confidential Information of the Disclosing Party are and shall be entirely voluntary on the Recipient's part, whether such suggestions, feedback or other information was solicited by the Disclosing Party or not, and shall not create any obligations on the part of the Disclosing Party. The Disclosing Party shall be free to disclose and use such suggestions, feedback, and other information of Recipient as the Disclosing Party sees fit, entirely and without obligation of any kind to the Recipient.
12. The Disclosing Party provides the Confidential Information and all related data strictly on an "AS IS" basis, but represents to the Recipient that to the knowledge of the undersigned representative the Disclosing Party has sufficient rights to provide the Confidential Information to Recipient for the purposes contemplated hereby.
13. Neither party may use the name, logos, or trademarks of the other in connection with any advertising or publicity materials or activities without the prior written consent of the other party.
14. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior discussions between them with respect to the subject matter hereof. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of each party. Neither party hereto may assign its rights or delegate its obligations under this Agreement, any such purported transactions being void.
15. This Agreement shall become effective as of the date Confidential Information is first delivered to the other hereunder.

ELT INC., 160 PINE STREET SUITE #200, SAN FRANCISCO, CA 94111

PRICING SHEET: 9243501

Terms:	NET 30
Vendor Number:	W000011760 X
Telephone Number:	415/962-3400
Fax Number:	415/982-1203
Contact Person:	Gary Borchart
E-mail Address:	gborchart@elt-inc.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending March 31, 2011.